

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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<i>In re: PHARMACEUTICAL INDUSTRY</i>	)	
AVERAGE WHOLESALE PRICE	)	MDL No. 1456
LITIGATION	)	
	)	Civil Action No. 01-12257-PBS
	)	
	)	Hon. Patti B. Saris
<b>THIS DOCUMENT RELATES TO:</b>	)	
	)	
<i>United States ex rel. Edward West, et al., v.</i>	)	
<i>Ortho-McNeil Pharmaceutical, Inc. and</i>	)	
<i>Johnson &amp; Johnson.</i>	)	
	)	
CIVIL ACTION NO. 06-12299-PBS	)	

**DEFENDANTS' MOTION TO DISMISS THE  
COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION**

Pursuant to Federal Rule of Civil Procedure 12(b)(1), defendants Ortho-McNeil Pharmaceutical, Inc. and Johnson & Johnson, Inc. (collectively, "Defendants"), by and through their attorneys, Sidley Austin LLP, respectfully request that the Court dismiss relator Edward West's First Amended Complaint for lack of subject matter jurisdiction. Specifically:

1. The Court lacks subject matter jurisdiction over West's claims, all of which are asserted under the federal False Claims Act and similar statutes enacted by nine States and the District of Columbia, because they are based on "publicly disclosed" allegations. *See* 31 U.S.C. § 3730(e)(4)(A).

2. The Court lacks subject matter jurisdiction over West's claims under the Nevada False Claims Act (Count IX) because they are based on the same allegations as those being pursued by the State of Nevada in a separate lawsuit. *See* N.R.S. § 357.080(3)(b).

3. The Court lacks subject matter jurisdiction over West's claims under the Hawaii False Claims Act (Count VI) because they are based on the same allegations as those being pursued by the State of Hawaii in a separate lawsuit. *See HI ST § 661-27(e)(3).*

A memorandum of points and authorities in support of the motion is being submitted herewith.

Date: June 11, 2007

Respectfully submitted,

ORTHO-MCNEIL PHARMACEUTICAL,  
INC. and JOHNSON AND JOHNSON, INC.

By: /s/ Scott D. Stein  
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**CERTIFICATE OF SERVICE**

I, Jordan S. Ginsberg, certify that on June 11, 2007, I electronically filed the foregoing document with the Clerk of the Court for the District of Massachusetts using the court's CM/ECF system.

A copy of the foregoing also has been served on the following individuals by depositing a copy in the U.S. mail, first-class postage pre-paid:

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